



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/157770

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a telephonic hearing was held on September 11, 2014.

The issue for determination is whether the agency has met its burden to show that it correctly seeks to terminate petitioner's personal trainer services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Carrie Haugen, Quality Services Specialist
IRIS Consultant Agency
1 S. Pinckney Street
Suite 320
Madison, WI 53703-2887

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County. He is 22 years old and is diagnosed with Asperger's, depression and anorexia. He has been enrolled in the IRIS program since February 7, 2011.
2. Since the time that petitioner began his participation in the IRIS program, his Individual Support and Service Plan (ISSP) has included a personal trainer service, at a weekly cost of \$19.78.
3. On May 9, 2014 the agency issued a notice to petitioner stating that it was terminating his personal training service effective September 14, 2014 because it was not the most cost-effective way to support his outcome(s) and because it did not meet the definition of customized service.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program, in that individuals in IRIS self-manage their publicly funded long-term care supports, goods, and services. IRIS is administered through regional ADRCs and two statewide contract organizations: the Independent Consultant Agency (ICA) and the Financial Services Agency (FSA).

As part of an individual's enrollment in IRIS, an ISSP is developed to have a plan for using waiver services to meet individual outcomes, assessed needs and health and safety needs. See 42 CFR §441.450(c). The federal code requires that if an agency is to provide the IRIS home and community-based services it must provide those services under a written plan of care which is subject to approval by the Medicaid agency. See 42 CFR §441.301(b)(1)(i). IRIS funds can only be used within an approved ISSP and budget, and only for services, supports or goods that meet the definitions of those services within the Waiver application.

In determining that petitioner's personal trainer services should be terminated, the IRIS agency determined that (1) there were more cost effective ways of meeting his outcomes and (2) that the personal trainer did not meet the definition of a customized service. The definition comes from the agency's policy, "IRIS Funding for Goods, Supports and Services", Policy: SC 16.1. Exhibit 8. That policy states that Customized Goods or Services, which the personal training service is considered, refers to a good that enhances the participant's opportunities to achieve outcomes related to living arrangement, relationship, community inclusion, work and functional or medical status. *Id.* Further, each good selected must meet *each* of the following four criteria:

1.
 - a. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her Individual Service Plan;
 - b. The service, support or good is documented on the Individual Service Plan;
 - c. The service, support or good is not prohibited by Federal and State statutes and regulations, including the State's Procurement Code;
 - d. The service, support or good is not available through another source or experimental in nature.

AND [at least one of the following criteria]:

- 2.

- a. The service, support or good will maintain or increase the participant's safety in the home or community environment;
- b. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services;
- c. The service, support or good will maintain or increase the participant's functioning related to the disability;
- d. The service, support or good will maintain or increase the participant's access to or presence in the community.

Id.

I find the personal trainer services meet the petitioner's functional, vocational, medical and social needs, and also advance the desired outcomes in his ISSP. His ISSP lists Goal #2 with the outcome for "Community Membership: I decide how I spend my day" and "I am very persistent in using weight machines at the YMCA. If I do not have someone to assist me and train me I will hurt myself on the machines instead of waiting for help. I need a trainer." Exhibit 2. Functionally, petitioner requires the services of his trainer because of his diagnoses which have caused petitioner in the past to overexercise and undereat. The wording on his ISSP reflects this. Petitioner's psychologist and physician submitted documents for the hearing in which they describe petitioner's past issues with overexercising and anorexia and his current status with having used the personal trainer services. One such letter states:

As recently as 2008 [REDACTED] was mere weeks away from an inpatient hospitalization because of his low weight and inability to stop himself from exercising and losing weight...Since the personal training has been in place, there has been a significant improvement in [REDACTED]. He is now at a healthy weight and no longer needs to see the nutritionist as he has been making healthy and safe food choices. He has been developing better social skills as a result of the relationship with his trainer. He trusts his trainer and is able to, with ongoing sessions, maintain the proper exercise limits to maintain his weight. Since [REDACTED] feels isolated because of his disabilities, having sessions with the trainer has been a "normal" activity that he participates in with people who do not have disabilities. This inclusive environment has increased his confidence and presence in the community. This improvement has allowed him to pursue vocational goals at the YMCA. These activities can only continue to increase his confidence and positively impact his mental health...The loss of this service has a high probability of causing a relapse with his depression and anorexia which would result in increased sessions with me and possibilities of hospitalization.

Exhibit 6; see also Exhibit 9.

These statements were corroborated by petitioner's guardian at hearing. Accordingly, I find 1.a. and 1.b. are met. There was no evidence to suggest the service is prohibited by Federal and State statutes and regulations, including the State's Procurement Code, and there should not be given the fact he has been receiving the service for about 3 years through IRIS. Thus, 1.c. is met as well.

As to 1.d., the IRIS agency's position was that the personal training service is available through another source because the agency had reviewed the YMCA's website which explained that along with a YMCA membership (which petitioner receives through IRIS), a YMCA member will receive help from a YMCA employee to familiarize the member with the exercise equipment and receive nutritional counseling. No evidence was submitted to support this finding, but a cursory review of the website did show that the Kettle Moraine YMCA states:

As a member (new, former or current) of the Kettle Moraine YMCA our staff is available to you free of charge to:

- Work with you in developing a workout plan
- Introduce you to our group exercise options
- Familiarize you to our strength and cardio equipment
- Connect you with one of our certified wellness coaches
- Educate you on eating right to reach your goals
- Educate you on the additional programming options available to you at the Kettle Moraine YMCA
- Provide you with support and motivation

Available at http://www.kmymca.org/healthy-living/wellness_orientation.html.

Additionally, the IRIS agency also proffered that a supportive home care (SHC) worker could attend the YMCA with the petitioner and supervise his workouts. I note there was no dispute that the petitioner has received some nutritional counseling from his personal trainer.

While I find that the nutritional counseling could be done as a free service at the YMCA, this seems to have been somewhat of an ancillary benefit to his personal training. What I find the agency failed to show here was that the free YMCA services can account for his overexercising. Familiarizing petitioner with the exercise equipment is not the same as monitoring his workouts to avoid the physical problems he had in the past. Further, the petitioner has rebutted the agency's position about the SHC worker being able to provide supervision for petitioner at the YMCA. First, there is no evidence to suggest that any of petitioner's SHC workers would be able to perform such a service competently or that it is within the scope of SHC duties. Second, the agency's own notes show that the IRIS Consultant (IC) contacted the YMCA to follow up on this option only to find that the YMCA said they would not allow it because of liability issues. Third, the evidence suggests that petitioner would not show the improvement he has if a SHC worker were to supervise workouts, as the personal training has been a normalizing activity for him that increases his independence as provided by someone petitioner trusts. In sum, I do not find the agency has met its burden to show that these personal training services are available through another source.

According to the policy, the petitioner must also meet one criterion from the second list. I find that the personal training service meets them all. The services have maintained and increased petitioner's safety in the home and community environment by improving his physical health, as well as by providing the supervision petitioner still requires to avoid overextending himself. The services have decreased sessions with a nutritionist and prevented increased dependence on other services by increasing his confidence and positively impacting his mental health. His psychologist writes, "The loss of this service has a high probability of causing a relapse with his depression and anorexia which would result in increased sessions with me and possibilities of hospitalization." See Exhibit 6. The services have increased his functioning related to the disability by stabilizing the eating disorder, improving his social skills and confidence, and paving the way for vocational pursuits. The services also maintain or increase his access to or presence in the community by providing a normalized experience that he desires, and again by improving his physical and mental well-being such that he now seeks vocational options.

The cost effectiveness argument has not been met yet either. The suggestions were either the free services suggested from the YMCA or having a SHC worker supervise him at the Y. As explained above, the free services do not substitute for the training and supervision petitioner receives from the personal trainer and there is no evidence to support a finding that a SHC worker could provide those services.

In sum, I find that the preponderance of the evidence supports a finding that the personal training services are cost effective and meeting his outcomes. The agency has not shown that there are less costly

alternatives that work to advance the desired outcomes in his ISSP. While it is clear that all MA programs need to consider the cost effectiveness of the services funded, it is not the sole determiner of whether services are allowable. For the foregoing reasons, I find that the personal training services are allowable.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly seeks to terminate petitioner's personal trainer services.

THEREFORE, it is

ORDERED

That the IRIS program rescind its determination to terminate petitioner's personal training services within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

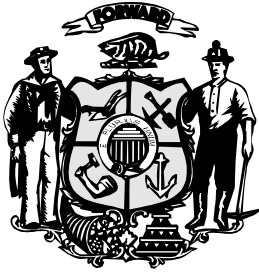
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of September, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 22, 2014.

Bureau of Long-Term Support

